

**Berger & Montague, P.C.**  
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April 28, 2017

**VIA ECF**

Honorable Lorna G. Schofield  
United States District Court  
for the Southern District of New York  
40 Foley Square  
New York, NY 10007

RE: *Contant, et al. v. Bank of America Corporation, et al.*, 1:17-cv-03139

Dear Judge Schofield:

The undersigned are counsel for the parties in *Baker, et al. v. Bank of America, et al.*, 16-cv-07512 (ECF 106), which was accepted by this Court as related to *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 1:13-cv-07789-LGS (“FOREX”). The above-referenced action was designated on the Civil Cover Sheet by counsel for the plaintiffs as “essentially the same” as the *Baker* action. As set forth in the parties’ joint letter to the Court in *Baker*, that action was voluntarily dismissed pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), concurrently with the filing of the above-referenced action. (ECF No. 179).

The parties in the above-referenced action respectfully submit this joint letter to provide the Court with the following information:

**1. Relatedness to the Direct Purchaser Action**

The parties agree that this action should be designated as related to *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 1:13-cv-07789-LGS (“FOREX”).

**2. Waiver of Service**

So as to conserve both party and judicial resources, Defendants hereby agree to waive service of the complaint pursuant to Fed. R. Civ. P. 4(d). Neither Defendants’ waiver of such service nor Defendants’ entry into this stipulation shall constitute a waiver of any other defense, including, but not limited to, the defenses of lack of subject matter jurisdiction, lack of personal jurisdiction, or improper venue. Service of the complaint on defendants shall be effective as of the date of the entry of the Order granting this stipulation.

**3. Briefing Schedule for Motions to Dismiss**

Defendants intend to move to dismiss the Class Action Complaint (“Complaint”) on multiple grounds, and Plaintiffs intend to oppose Defendants’ Motions to Dismiss in full. The parties respectfully propose that the Court enter the following schedule:

- 1) Defendants shall file a joint 12(b)(6) Motion to Dismiss and/or Stay and a separate joint 12(b)(2) Motion to Dismiss, both due 45 days after the entry of this Order;
- 2) Plaintiffs shall file memoranda in opposition to Defendants' Motions to Dismiss, both due 45 days after the filing of Defendants' motions;
- 3) In lieu of filing memoranda in opposition to Defendants' motions, Plaintiffs may file an amended complaint within 45 days of the filing of Defendants' motions;
- 4) If Plaintiffs file memoranda in opposition to Defendants' motions, Defendants may file joint reply briefs, due 23 days after the filing of Plaintiffs' opposition briefs.

It is the parties' hope that the stipulation will allow the Court to dispense (if it so wishes) with the initial case management conference as provided for under Rule IV (A)(2) of this Court's Individual Rules and Procedures for Civil Cases. Should the Court accept the *Contant* action as related to *FOREX*, the parties anticipate that they will promptly submit a Proposed Joint Stipulation consistent with the schedule described herein.

#### 4. Civil Case Management Plan.

The parties respectfully submit that a proposed case management plan and scheduling order ("Plan") should await the disposition of the anticipated Motions to Dismiss or Stay. Accordingly, the parties agree that the discovery stay as ordered by this Court in this case's predecessor, *Baker, et al. v. Bank of America, et al.*, 16-cv-07512 (ECF 106), will apply here pending further order of the Court, provided that the parties reserve all rights to seek an order permitting discovery prior to the Court's decision on the Defendants' motions to dismiss if they later determine that good cause exists. As provided in the same order, if depositions are scheduled in *FOREX*, Defendants shall promptly notify Plaintiffs so that Plaintiffs may move to lift the stay.

Dated: April 28, 2017

Respectfully submitted,

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